

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Pitcher Sales Inc.

Date of Filing: January 24, 1995

Case Number: VEE-0004

On January 24, 1995, Pitcher Sales Inc. (Pitcher) of Lewiston, Utah, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Pitcher requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) forms entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B) and "Petroleum Product Sales Identification Survey" (Form EIA-863). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

Form EIA-782B and Form EIA-863 are both mandatory reporting requirements which grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. While Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers, Form EIA-863 is a triannual survey that collects information on the annual sales volumes, type and geographic location of firms which deal in petroleum products. 42 U.S.C. § 7135(b).

Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the forms, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small

sample of companies to file Form EIA-782B.<1> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<2>

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three

years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Pitcher's Exception Application

Pitcher, a reseller and retailer of propane, requests an exception to Form EIA-782B and Form EIA-863 reporting on the basis that filing these surveys is too time consuming and onerous. In its Application, Pitcher states that it has annual propane sales of approximately 250,000 gallons, and employs a total of four full-time employees. Pitcher contends that the small size of its operations and the absence of automation makes timely and accurate filing very difficult. The firm also claims that the process of extracting propane figures from company invoices is arduous because it sells such a diverse range of products. Pitcher estimates that completion of the monthly survey requires three and one half hours. Furthermore, Pitcher argues that estimation is not a viable option for the firm because its propane sales shift so dramatically each month<sup>3</sup> and extend between two states.<sup>4</sup> Pitcher therefore has requested an exception from the requirement that it file Form EIA-782B and Form EIA-863.

## D. Analysis

Pitcher has not shown that it is suffering a financial hardship, medical problems, or any other serious impediment to its operations. Pitcher states that completing Form EIA-782B takes approximately three and one half hours, which is slightly longer than the 2.5 hours which EIA estimates the form should require.<sup>5</sup> However, the amount of time invested in filing is not in itself a sufficient criteria to warrant exception. In the past, we have denied exception requests where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

In summary, Pitcher has not demonstrated that its burden of providing the requested data is excessive compared to other firms or that it outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B and Form EIA-863 constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. Unless firms such as Pitcher are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Pitcher's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Pitcher is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B and Form EIA-863. Consequently, the Department of Energy has determined that the Application for Exception filed by Pitcher should be denied.

On August 5, 1995, a copy of the determination that appears above was provided to Pitcher Sales Inc. in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Pitcher was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision and Order. See 10 C.F.R. §§ 205.58 and 205.62. Pitcher was further advised that it would be deemed to consent to the issuance of the Proposed Decision and Order in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired, and we have received no such document from Pitcher or any other potentially aggrieved party. Consequently, this Decision and Order is being issued in final form. Pitcher will accordingly be deemed to consent to the issuance of the present determination.

## It Is Therefore Ordered That:

(1) The Application for Exception filed by Pitcher Sales Inc. on January 24, 1995, is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>1/ In Form EIA-782B, firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<2>2/ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<3>3/ See Memorandum of Telephone Conversation between Ms. Kaylane Pitcher, co-owner of Pitcher, and Ms. Allison Varzally, OHA staff analyst (February 13, 1995).

<4>4/ Form EIA-782B requires applicants to break down sales according to the state in which its petroleum products are sold which may lengthen the preparation time for the Form.

<5>5/ We believe Pitcher could alleviate the inconvenience of filing the Form without compromising EIA's comprehensive survey of its markets if it adopted a system of estimation. For example, Pitcher could use monthly propane purchases to represent propane sales. In addition the firm could estimate the distribution of total propane sales between states rather than computing an exact breakdown.